

Strikes (Minimum Service Levels) Bill: sweeping executive powers vulnerable to legal challenge by *Charlotte Goodman, Barrister, Cloisters Chambers* (30th January 2023)

The [Strikes \(Minimum Service Levels\) Bill](#) proposes to empower the Secretary of State to make regulations setting minimum service levels required during strikes in six sectors. There are no substantive limits on these powers, with only a requirement to consult “such persons as the Secretary of State considers appropriate”.

Employers in those sectors will then have broad scope to decide which work needs to be done to meet those levels. They will be able to give a “work notice” to trade unions specifying which workers should work on strike days and what work those workers should do.

If those workers fail to comply with the work notice, they lose [existing protection](#) from unfair dismissal for taking part in a strike.

If a union fails to “take reasonable steps” to ensure that those workers comply with the work notice, the strike is no longer a protected strike.

If this happens, it means the union can be sued for the strike action.

It also means that ***all workers who strike, whether or not they have failed to comply with a work notice, lose their protection from unfair dismissal and can be fairly dismissed for striking.***

The Bill grants broad powers to ministers to limit strike action that may breach international law. It should concern members from all parties:

- The Bill grants a very wide scope for regulations to define minimum levels of service across each of the six sectors, with only light consultation requirements. This arguably contravenes ILO standards, which provide for *negotiated* minimum services. As a result, the Bill is vulnerable to legal challenges for [breaching international human rights law](#) (as [a previous Government Memorandum recognised](#)). To avoid this, minimum service levels should be negotiated with social partners to create safeguards against breaches of the ILO standards.
- The Bill includes an extremely broad Henry VIII power to amend other primary legislation by regulation, including future legislation in the same session.
- The Bill interferes with individual workers’ liberty to strike. Those named by work notices face dismissal for non-compliance. In addition, the threshold a union must meet to comply with its obligation to “take reasonable steps” is unknown. It may be a high threshold, and if the union fails to meet it the strike action would lose protection. This would render all striking workers (not just those subject to a work notice) vulnerable to fair dismissal for striking. The Bill should be amended to preserve protection from unfair dismissal for striking workers who have failed to comply with a work notice and/or where the union failed to take reasonable steps.

MPs are urged to vote against this Bill. At the committee stage on 30th January 2023, MPs are urged to support the tabled amendments which are aimed at:

- removing the Henry VIII power (in clause 3) to amend, repeal or revoke primary legislation through regulation
- ensuring minimum service regulations are only made after consultation and negotiation with social partners
- conducting impact assessments on the bill before it comes into operation
- removing or tempering the requirements for trade unions to take reasonable steps for compliance with work notices.

For further information contact the author at cng@cloisters.com. Contact Prof Alison Scott-Baumann for access to other experts at as150@soas.ac.uk, and visit [our website](#) for more information. *The views expressed in SOAS ICOP Briefings are those of the authors and do not necessarily represent those of SOAS.*